

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ADA RODRIGUEZ, Decedent, and ALBERTO BETANCOURT, personally, and as Legal Representative and Next of Kin of his mother ADA RODRIGUEZ, Decedent,

Plaintiffs,

-against-

UNITED STATES, et al.

Defendants.

1:21-CV-10679 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

By order and judgment dated and entered January 31, 2022, the Court dismissed this *pro se* action. On April 1, 2022, Plaintiff Alberto Betancourt filed a notice of appeal. (ECF 7.) On that same date, he also filed a “Motion for Poor Person Relief on Appeal for Assigned Counsel on Appeal Alternatively for an Extension of Time to file Notice of Appeal,” in which he principally seeks relief from the United States Court of Appeals for the Second Circuit, but also seeks an extension of time to file a notice of appeal under Rule 4(a)(5) of the Federal Rules of Appellate Procedure (“Rule 4(a)(5)”). (ECF 8.) Because, under that rule, the district court must decide whether to grant an extension of time to file a notice of appeal, *see Fed. R. App. P. 4(a)(5)(A)*, the Court will consider that portion of Plaintiff Alberto Betancourt’s motion that seeks such relief.

For the reason discussed below, the Court denies as unnecessary that portion of the motion that seeks an extension of time to file a notice of appeal.

**DISCUSSION**

If one of the parties in a federal civil action is either the United States of America, a federal agency, a federal officer or employee sued in his or her official capacity, or a current or

former federal officer or employee sued in his or her individual capacity for an act or omission “occurring in connection with duties performed on the United States’ behalf,” a litigant has 60 days from the entry date of the order or judgment that he wishes to challenge to file a notice of appeal. Fed. R. App. P. 4(a)(1)(B)(i)-(iv).

In addition to other federal defendants, the United States of America is named as a defendant in this action. On January 31, 2022, the Clerk of Court entered the order and judgment dismissing this action. Thus, Plaintiff Alberto Betancourt had 60 days from that date, or until April 1, 2022, to file a timely notice of appeal. He filed a notice of appeal on April 1, 2022. Accordingly, to the extent that Plaintiff Alberto Betancourt seeks an extension of time to file a notice of appeal under Rule 4(a)(5), the Court denies his request as unnecessary.

### **CONCLUSION**

The Court denies as unnecessary that portion of Plaintiff Alberto Betancourt’s pending motion (ECF 8) that seeks an extension of time to file a notice of appeal under Rule 4(a)(5) of the Federal Rules of Appellate Procedure. The Court directs the Clerk of Court to terminate that motion on this court’s docket.

SO ORDERED.

Dated: April 22, 2022  
New York, New York

/s/ Laura Taylor Swain

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LAURA TAYLOR SWAIN  
Chief United States District Judge